



ARIZONA STATE SENATE
Fifty-Fifth Legislature, Second Regular Session

FACT SHEET FOR S.B. 1310

~~incompetent defendants; public safety guardianship~~
(NOW: dangerous; incompetent person; evaluation; commitment)

Purpose

Effective January 1, 2024, establishes procedures regarding the commitment, detainment, conditional release and discharge of a defendant deemed incompetent, non-restorable and dangerous. Outlines requirements for the treatment of a committed defendant.

Background

Statute allows any party, if the court finds that a defendant is incompetent to stand trial and that there is no substantial probability that the defendant will regain competency within 21 months after the date of the original finding of incompetency, to request that the court: 1) remand the defendant to an evaluating agency for the institution of civil commitment proceedings; 2) appoint a guardian; or 3) release the defendant from custody and dismiss the charges against the defendant without prejudice. If the defendant is remanded, the prosecutor is required to file a petition for evaluation and provide any known criminal history of the defendant ([A.R.S. § 13-4517](#)).

Incompetent to stand trial means a defendant, as a result of a mental illness, defect or disability, is unable to understand the nature and object of the proceeding or to assist in the defendant's defense. *Incompetent to stand trial* also means, in the case of a person under 18 years old, a person who does not have sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the person ([A.R.S. § 13-4501](#)).

The Joint Legislative Budget Committee (JLBC) [fiscal note](#) for the Senate Engrossed version of S.B. 1310 states that the fiscal impact of this legislation is uncertain because it is difficult to predict how often dangerous defendants would be committed. JLBC received various estimations from the Department of Health Services (DHS), the Arizona Health Care Cost Containment System (AHCCCS) and the Administrative Office of the Courts for ongoing annual costs and the cost of constructing new facilities, which are explained in greater detail in the fiscal note.

Provisions

Trial for Involuntary Commitment

1. Allows any party to request that the court order a trial to determine if a defendant is dangerous and should be involuntarily committed if:
 - a) the court finds that the defendant is incompetent to stand trial;
 - b) the court finds that that there is no substantial probability that the defendant will regain competency within 21 months after the date of the original finding of incompetency; and
 - c) the defendant is charged with a serious offense.

2. Requires the court to appoint an attorney to represent the defendant in all proceedings if the defendant is not represented by an attorney and is indigent.
3. Allows the court, if a defendant is charged with a serious offense, to order the county sheriff to take the defendant into custody so that the court may explore options to appoint the defendant a guardian, dismiss the charge against the defendant without prejudice or order a trial to determine whether the defendant is dangerous and should be involuntarily committed if the court:
 - a) remands the defendant for the institution of civil commitment proceedings and is notified that the defendant has not had a civil commitment evaluation or enters an order for a trial to determine if the defendant is dangerous; or
 - b) is notified that the defendant has not been ordered into treatment and the court has retained jurisdiction.
4. Requires the court, within 10 days after issuing an order for involuntary commitment, to hold a hearing to determine if the proof is evident or the presumption great that the defendant committed the act that constitutes a serious offense.
5. Requires the court, if it does not find proof evident or presumption great that the defendant committed the act, to:
 - a) proceed with orders for treatment that do not involve involuntary commitment; or
 - b) release the defendant from custody and dismiss the charges against the defendant without prejudice.
6. Requires the court, if it does find proof evident or presumption great, to hold a trial within 120 days after the court issued the order.
7. Requires a trial to determine dangerousness to be held before the court unless the state or defendant requests a jury trial.
8. States that the Arizona Rules of Evidence and Arizona Rules of Civil Procedure apply to these proceedings, except that the court may consider evidence that is not admissible under the Arizona Rules of Evidence when making a determination of a defendant's dangerousness.
9. Allows the court, if a trial to determine if a defendant is dangerous and should be involuntarily committed is ordered, to also order an assessment of the defendant's eligibility for private insurance or public benefits that may be applied to the expenses of the defendant's medically necessary maintenance and treatment.
10. Requires, if there has not been a previous evaluation to determine whether a defendant is dangerous, the defendant to be examined by mental health experts to make such a determination.
11. Allows a defendant and the state to each retain a mental health expert to examine the defendant and present the defendant's mental health evaluation at a dangerousness trial.

12. Requires a competency evaluation report to include:
 - a) if the defendant is deemed incompetent to stand trial, and if requested by the state, whether the defendant should be considered dangerous and the nature of the mental illness, disease or defect that makes the defendant likely to be dangerous; and
 - b) whether the defendant has a history of dangerous conduct.
13. Requires an appointed mental health expert to submit a written report of the examination to the court within 10 working days after the examination is completed.
14. Requires the report to the court to include:
 - a) the name of each mental health expert who examined the defendant;
 - b) a description of the nature, content extent and results of the examination and any test conducted;
 - c) the facts on which the findings are based;
 - d) an opinion as to whether the defendant should be considered dangerous, including the nature of the mental illness, disease or defect that makes the defendant likely to be dangerous and the defendant's prognosis; and
 - e) the most appropriate form and place of treatment in Arizona based on the defendant's therapeutic needs and potential threat to public safety.
15. Allows a court to open a sealed competency examination report submitted for a trial or plea negotiation in a trial to determine whether the defendant is dangerous and eligible for involuntary commitment.
16. Requires the state at trial to prove beyond a reasonable doubt that the defendant is dangerous and should be involuntarily committed.
17. Requires the court, if a factfinder does not find that a defendant is dangerous or should be involuntarily committed, to:
 - a) remand the defendant to an evaluating agency for the institution of civil commitment proceedings;
 - b) appoint a guardian; or
 - c) release the defendant from custody and dismiss the charges against the defendant without prejudice.
18. Requires the court, if the factfinder finds that the defendant is dangerous and should be involuntarily committed, to dismiss the charges against the defendant without prejudice and order the defendant to be committed to a secure state mental health facility.
19. Requires a defendant deemed dangerous to receive education, care, supervision and treatment to render the defendant competent or non-dangerous.
20. Requires, if the court issues a commitment order for a dangerous or incompetent defendant:
 - a) all further proceedings for the defendant's continued treatment and the circumstances under which the defendant may be released to be conducted pursuant to statute regarding dangerous and incompetent persons; and

- b) the order to require that the defendant remain committed to secure state mental health facility until the court finds that the defendant is competent to stand trial or is no longer dangerous.
- 21. Prohibits a commitment order from being in effect for more than the presumptive sentence the defendant could have received for the highest charged offense.
- 22. Prohibits the court from considering outlined sentence enhancements for prior convictions when determining the duration of the commitment order.
- 23. Require court to consider all time the defendant has been in custody, including pretrial detention, when determining the duration of the commitment order.
- 24. Allows the court to retain jurisdiction over a dangerous defendant until the defendant is involuntarily committed.
- 25. Stipulates that the court has continuing jurisdiction over a person committed following a trial regarding dangerous and incompetent persons.
- 26. Requires the court to retain jurisdiction over a defendant who is committed following a trial to determine if the defendant is dangerous until the court discharges the defendant from treatment.
- 27. Allows the Medical Director of a secure state mental health facility, if a defendant is discharged or released on the expiration of a commitment order, to file a petition stating that the defendant requires further treatment or the appointment of a guardian.
- 28. Allows AHCCCS to accept private or public benefit monies without a court order.
- 29. Deems AHCCCS responsible for all remaining costs associated with the involuntary commitment of a dangerous and incompetent defendant.
- 30. Stipulates that findings made by the court and any statements made by the defendant during an examination by a mental health expert are only admissible in proceedings commenced under statute regarding dangerous and incompetent persons.
- 31. Requires that, if a previously dangerous and incompetent person is found competent to stand trial after an involuntary commitment, the person receive credit for all time that the person spent under the jurisdiction of the secure state mental health facility against a term of imprisonment for any of the charges that were the basis of the involuntary commitment.

Biannual Examination of Committed Persons

- 32. Requires a psychologist, psychiatrist or other competent professional of the secure state mental health facility to:
 - a) biannually examine each person committed as a dangerous and incompetent defendant; and
 - b) submit the examination report (report) to the court, the state and the committed defendant.
- 33. Requires the report to state:
 - a) the treatment and education that the committed defendant has received;
 - b) a prognosis for the committed defendant's restoration to competency; and
 - c) whether the committed defendant remains dangerous.

34. Requires the report, if the psychiatrist, psychologist or other competent professional submits a report that the committed defendant is no longer dangerous in whole or in part because of medication, to state whether the committed defendant will continue to take that medication if released to a less restrictive alternative (LRA) and would comply with all other conditions of an LRA.
35. Requires the court to hold a hearing to determine whether the committed defendant is competent or is no longer dangerous within 45 days of receiving a report that indicates that the committed defendant:
 - a) is competent to stand trial; or
 - b) is no longer dangerous.
36. Allows the court to continue a hearing to determine if a committed defendant is competent to stand trial or no longer dangerous:
 - a) on the request of either party and a showing of good cause; or
 - b) on its own motion if the committed defendant will not be substantially prejudiced.
37. Allows either party to request that the committed defendant be examined by the party's own competent professional.
38. Assigns the attorney for the state the burden to prove by clear and convincing evidence that:
 - a) the committed defendant's mental illness, defect or disability has not changed and that the committed defendant remains dangerous; and
 - b) the committed defendant is incompetent to stand trial.
39. Requires a retained or appointed competent professional to have access to all records concerning the committed defendant.
40. Requires all competent professionals to have equal access to the committed defendant and records concerning the committed defendant.
41. Requires the court to notify the attorney for the state and the committed defendant if the defendant's attorney withdraws from representation at any time during the defendant's commitment and either allow the defendant sufficient time to employ another attorney or, if the defendant is indigent, appoint an attorney to represent the defendant.
42. Stipulates that a committed defendant is not precluded from petitioning the court for conditional release to an LRA or discharge from treatment.

Petition for Conditional Release to an LRA

43. Requires the Medical Director to allow a committed defendant to petition the court for conditional release to an LRA if the Medical Director determines that the committed defendant's mental illness, defect or disability has changed and the defendant is no longer dangerous if conditionally released to an LRA.
44. Requires the committed defendant to serve a petition for conditional release on the court and the attorney for the state.

45. Requires the court to hold a hearing on a petition for conditional release within 45 days of receiving the petition.
46. Allows the court to continue a hearing on a petition for conditional release on the request of either party and a showing of good cause or on its own motion if the committed defendant will not be substantially prejudiced.
47. Requires the attorney for the state to prove by clear and convincing evidence that:
 - a) the committed defendant's mental illness, defect or disability has not changed; and
 - b) the committed defendant remains dangerous if conditionally released to an LRA or conditionally released.
48. Requires that the committed defendant be discharged from treatment if the state does not meet its burden of proof.
49. Requires the court to deny conditional release to an LRA if, at the conclusion of the hearing, the court finds that there is no legally sufficient evidentiary basis to conclude that the conditions of release have been met.
50. Stipulates that the committed defendant is not prohibited from annually petitioning the court for conditional release to an LRA without the approval of the Medical Director.
51. Requires the Medical Director to annually provide a committed defendant with written notice of the defendant's right to petition the court for conditional release to an LRA without the approval of the Medical Director.
52. Requires the notice to include a waiver of rights.
53. Requires the Director to submit the notice of the committed defendant's right to petition and waiver of rights to the court with the report.
54. Allows a committed defendant to be present at the defendant's hearing.
55. Allows either party to request that the committed defendant be examined by the party's own competent professional.
56. Allows the court, on request of an indigent committed defendant, to appoint a competent professional.

Conditional Release to an LRA

57. Requires the court to enter judgment and order a committed defendant's conditional release to an LRA if the court determines that:
 - a) conditional release to an LRA is in the best interest of the committed defendant;
 - b) conditional release to an LRA will adequately protect the community; and
 - c) the minimum conditions for conditional release have been met.

58. Requires the court to find, before ordering that a committed defendant be conditionally released to an LRA, that:
- a) the committed defendant will be treated by a competent professional;
 - b) the competent professional presents a specific course of treatment for the defendant, agrees to assume responsibility for the defendant's treatment, will report on the defendant's progress to the court on a regular basis and will report any violations of the provider's requirements, the court's requirements or the Medical Director's requirements by the defendant;
 - c) the defendant who is conditionally released to an LRA has housing arrangements that are sufficiently secure to protect the community and the person or agency that is providing the housing agrees in writing to:
 - i. accept the conditionally released committed defendant;
 - ii. provide the level of security that the court requires; and
 - iii. immediately report the unauthorized absence of the conditionally released defendant from the defendant's assigned housing arrangement;
 - d) the defendant will comply with the competent professional and all requirements that are imposed by the provider and the court; and
 - e) the defendant will comply with the supervision requirements imposed by the court or the Medical Director.
59. Allows the court to deny the request for conditional release to an LRA if the court concludes that the only reason a defendant does not meet the standard for continued commitment is the effect of treatment or habilitation being received, unless the court finds by a preponderance of the evidence that the defendant will continue to receive treatment and habilitation following release for as long as the treatment and habilitation is required.
60. Allows the court to order a committed defendant to be conditionally released to an LRA if the court finds that the defendant will continue to receive needed treatment or habilitation on the condition that the defendant continue to receive the treatment or habilitation.
61. Allows the court to revoke conditional release if a committed defendant fails to receive ordered treatment or habilitation.
62. Allows the court to impose any additional conditions on a committed defendant that the court determines are necessary to ensure the defendant's compliance with treatment and to protect the community.
63. Requires the court to remand the committed defendant to the custody of the Medical Director for care, supervision or treatment in a secure state mental health facility if the court finds that conditions do not exist that will both ensure the defendant's compliance with treatment and protect the community.
64. Requires a provider that is not ASH and that is designated to provide inpatient or outpatient treatment to monitor or supervise any other terms and conditions of a committed defendant's placement in an LRA to agree in writing to provide the treatment.
65. Requires the court to impose any conditions on the committed defendant that the court determines are necessary to ensure the safety of the community before the court authorizes a committed defendant's conditional release to an LRA.

66. Allows the conditions of release to an LRA to include:
 - a) a specific residence;
 - b) requiring compliance with any medications prescribed and any testing or monitoring required;
 - c) prohibiting any contact with potential or past victims or other persons and prohibiting association with other persons or types of persons;
 - d) prohibiting the use of alcohol and other drugs;
 - e) requiring that the committed defendant remain in Arizona unless the committed defendant receives prior authorization to leave from the court;
 - f) requiring compliance with required supervision, monitoring or reporting; and
 - g) complying with other conditions that the court or the Medical Director determines are in the best interest of the committed defendant or others.
67. Requires a committed defendant, before being released to an LRA, to submit to 90 days, or, in the Medical Director's discretion, less than 90 days, of inpatient evaluation at a secure state mental health facility.
68. Requires the court to order the Medical Director to investigate an LRA and to submit additional conditions to the court.
69. Requires the court to give a copy of the conditions of release to the committed defendant and to any designated service provider.
70. Requires the court, following a determination that a committed defendant's release to an LRA is warranted and after considering the recommendation regarding the duration and amount of treatment by the Medical Director, to require as a condition of release to an LRA that the defendant's participation in outpatient treatment continues until:
 - a) the court orders a change in the defendant's treatment requirements; or
 - b) the defendant is discharged because the defendant is no longer dangerous but remains incompetent to stand trial.
71. Allows outpatient supervision and treatment to include monitoring a committed defendant by use of an electronic bracelet.
72. Requires the court to initially review the case of each committed defendant who is conditionally released to an LRA within one year after the defendant's release and, on motion of either party, of the Medical Director or of the court until the defendant is discharged.
73. Requires the court, at a case review, to determine only if the committed defendant is required to continue to be conditionally released to an LRA, considering:
 - a) the reports submitted by each designated service provider; and
 - b) the opinions of the Medical Director and any other professional.
74. Requires each designated service provider, each month or as otherwise directed by the court, to submit a report that states whether a committed defendant is complying with the terms and conditions of conditional release to an LRA to each of the following:
 - a) the court;
 - b) the secure state mental health facility from which the committed defendant person was released; and
 - c) the attorney for the state.

Revocation of Conditional Release to an LRA

75. Allows the Medical Director or attorney for the state Medical Director to petition the court for, or the court on its own motion to schedule, a hearing for the purpose of revoking or modifying the terms and conditions of a committed defendant's conditional release if the attorney for the state or the court believes that the conditionally released defendant:
 - a) is not complying with the terms and conditions of release; or
 - b) needs additional care and treatment.
76. Allows the court to order that a conditionally released defendant be detained and taken into custody until a hearing can be scheduled to determine if the defendant's conditional release should be revoked or modified if the attorney for the state or the court reasonably believes that:
 - a) the defendant is not complying with the terms and conditions of release;
 - b) the defendant needs additional care or treatment; or
 - c) the circumstances of the release have changed so that the community is no longer safe.
77. Requires the court representing a committed defendant to be notified before the close of the next judicial day of the defendant's detention.
78. Allows the attorney for the state and the committed defendant to request an immediate mental examination of the detained defendant following detention.
79. Requires the court, on request, to assist an indigent conditionally released committed defendant in obtaining a competent professional to conduct a mental examination.
80. Requires the court to schedule a hearing to modify or revoke a committed defendant's conditional release to an LRA within:
 - a) 10 days after a petition to modify or revoke the defendant's conditional release is filed; or
 - b) 5 days after receiving notice of the defendant's detention.
81. Requires the court, at a hearing for a conditionally released committed defendant, to determine, if the state has proved by a preponderance of the evidence that the defendant did not comply with the terms and conditions of release, if the defendant needs additional care or treatment or if the circumstances of the release have changed so that the community is no longer safe, if:
 - a) the defendant should continue conditional release under the same or modified conditions; or
 - b) the conditional release should be revoked and the defendant should be committed to total confinement, subject to release only as specifically provided in statute.
82. Allows the court to admit hearsay evidence if the court finds that the hearsay evidence is otherwise reliable.

Petition for Discharge

83. Requires the Medical Director to allow a committed defendant to petition the court for discharge if the Medical Director determines that the defendant's mental illness, defect or disability has changed so that the defendant is no longer dangerous if discharged but remains incompetent to stand trial.

84. Requires a committed defendant to serve a petition for discharge on the court and the attorney for the state.
85. Requires the court to hold a hearing on a petition for discharge for a committed defendant within 45 days after receiving the petition.
86. Allows a committed defendant to be present at the defendant's discharge hearing.
87. Allows the court to continue a discharge hearing:
 - a) on the request of either party and a showing of good cause; or
 - b) on its own motion if the defendant will not be substantially prejudiced.
88. Assigns the attorney for the state the burden of proving by clear and convincing evidence that:
 - a) the defendant's mental illness, defect or disability has not changed; and
 - b) the defendant remains dangerous.
89. Requires the committed defendant to be discharged from treatment if the state does not meet its burden of proof.
90. Stipulates that a committed defendant is not prohibited from annually petitioning the court for discharge without the approval of the Medical Director.
91. Requires the Medical Director to provide annually to a committed defendant:
 - a) notice of the defendant's right to petition the court for discharge without the approval of the Medical Director; and
 - b) a waiver of rights.
92. Requires the Medical Director to provide a copy of the written notice to the committed defendant in connection with proceedings regarding incompetent and dangerous persons.
93. Requires the Medical Director to submit the notice and waiver to the court with the Director's annual report.

Transportation of Committed Defendants and Location of Proceedings

94. Grants the Medical Director and any county sheriff immunity from liability for any good faith acts regarding transportation of committed defendants.
95. Deems the Medical Director responsible for transporting a committed defendant to and from a medical facility.
96. Requires the Medical Director to determine the appropriate mode of transportation and level of security and restraint for the transportation needs of a defendant, considering the safety of the public, the transporting personnel and the defendant.
97. Prohibits a committed defendant from being transported from a secure state mental health facility, unless the defendant is being transported to court for:
 - a) a hearing on a biannual examination;
 - b) a hearing on a petition for conditional release to an LRA or for discharge;

- c) any evidentiary hearing in which the presence of a defendant is necessary; or
 - d) any court proceeding not otherwise specified where the presence of the defendant is required.
98. Exempts any committed defendant who the court has determined is subject to discharge or to any necessary medical transports from transportation limitations under supervision of the Superintendent.
99. Stipulates that transportation limitations by supervision of the Medical Director do not preclude any proceeding from being held on the grounds of a secure state mental health facility or from using a telephonic conference or an interactive audio-visual device.
100. Allows rules adopted by the court to include provisions that allow for proceedings to be held on the grounds of a secure state mental health facility or for the use of a telephonic conference or an interactive audio-visual device.

Detention and Commitment Requirements

101. Prohibits a defendant from suffering any legal disability due to any actions taken or orders made pursuant to the statute regarding dangerous and incompetent individuals, except as specifically provided.
102. Stipulates that a defendant does not forfeit any legal right.
103. Stipulates that the Dangerous and Incompetent Persons statutes do not prohibit a committed defendant from exercising any right available for the purpose of obtaining release from confinement, including the right to petition for a writ of habeas corpus.
104. Requires the committed defendant to exhaust all direct appeal and post commitment procedures before exercising the defendant's right to petition for a writ of habeas corpus.
105. Requires the Medical Director, when a committed defendant is conditionally released to an LRA or discharged, to furnish the committed defendant with monies accumulated by the committed defendant in the defendant's dedicated discharge account.
106. Requires the person in charge of the facility or the person's designee, at the time a committed defendant is detained or transferred to a licensed facility, to take reasonable precautions to inventory and safeguard the personal property of the detained or transferred defendant.
107. Requires the staff member who makes an inventory of a committed defendant's personal property to give a signed copy of that inventory to the defendant.
108. Requires the facility to allow a responsible relative to inspect a committed defendant's property, subject to any limits that the defendant specifically imposes.
109. Prohibits the facility from disclosing the contents of the inventory to any other person without the consent of the committed defendant or a court order.

110. States that the Medical Director is responsible for expenses associated with the education, care, supervision and treatment to render the committed defendant either competent or nondangerous.
111. Prohibits an indigent committed defendant from being conditionally released to an LRA or discharged without suitable clothing.
112. Requires the Medical Director to keep records detailing all medical, expert and professional care and treatment that a committed defendant receives and to keep copies of all reports of periodic examinations.
113. Requires records kept by the Medical Director to be made available on request only to:
 - a) the committed defendant;
 - b) the committed defendant's attorney;
 - c) the attorney for the state;
 - d) the court;
 - e) an expert or professional who demonstrates a need for access to the records or reports on proper showing; or
 - f) any mental health professional directly responsible or associated with the mental health professional who is directly responsible for the care, control, assessment or treatment of the committed defendant.

Definitions

114. Defines *attorney for the state* as the county attorney in the county where the committee defendant was found to be a committed defendant, or the attorney general, who represents the state at any proceedings held.
115. Defines *biannually* as twice per year.
116. Defines *committed defendant* as:
 - a) a person who has been determined to be incompetent, non-restorable and dangerous; and
 - b) includes the committed defendant's attorney or the committed defendant's court-ordered guardian, if any.
117. Defines *LRA* as court-ordered treatment in a setting that is less restrictive than total confinement.
118. Defines *mental illness, defect or disability* as a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including a congenital mental condition, a condition resulting from injury or disease or a developmental disability.
119. Defines *dangerous* as that, as a result of a mental illness, defect or disability, a person's continued behavior can reasonably be expected, on the basis of a mental health expert's opinion, to result in serious physical harm or death to another person.
120. Defines *medical director* as the medical director of the secure behavioral health residential facility in which the committed defendant resides.

121. Defines *secure state mental health facility* as a secure behavioral health residential facility that is appropriately licensed.
122. Defines *competent professional* as a person who is:
- a) familiar with Arizona's Criminal and Involuntary Commitment statutes and standards that are available in Arizona for a person with a mental illness, defect or disability; and
 - b) approved by the superior court as meeting court-approved guidelines.
123. Defines *responsible relative* as the spouse, parent, adult child or adult sibling of the committed defendant, including the guardian, conservator or attorney of the committed defendant.

Miscellaneous

124. Requires a criminal justice agency, if requested by a licensed mental health hospital, to assist the hospital in determining the identity of an unidentified patient who is either incapacitated or deceased through an analysis of the patient's fingerprints or biometric identification techniques.
125. Allows the hospital or another person to fingerprint or obtain the biometric information from the unidentified patient and provide the fingerprints or biometric information to the criminal justice agency without the patient's consent or authorization.
126. Requires the criminal justice agency to provide the name of the unidentified patient to the hospital but is prohibited from providing any of the patient's criminal history record.
127. States that the requesting hospital is responsible for the cost of fingerprinting or obtaining the biometric information from the patient and is required to pay the fee for fingerprint and criminal history record processing.
128. Requires the court to adopt rules concerning the conduct of proceedings for commitment of dangerous and incompetent persons that ensure the safety of all persons.
129. Prohibits specified findings made by the court from being admitted in any proceeding other than a proceeding regarding dangerousness and incompetence to stand trial.
130. Requires the Director, by September 1 of each year, to submit a report to the Governor, the Legislature and the Supreme Court that includes:
- a) an accounting of where the monies appropriated to AHCCCS for secure behavioral health residential facilities were used during the previous fiscal year; and
 - b) the number of available beds in each secure behavioral health residential facility.
131. Requires the court, after a hearing to determine whether a committed defendant is competent or no longer dangerous or a hearing on a petition for conditional release of a committed defendant to an LRA, to:
- a) order the criminal proceedings to resume if the court finds that the committed defendant has been restored to competency;
 - b) release the committed defendant from treatment and remand the defendant to an evaluating agency for the institution of civil commitment proceedings, appoint a guardian to the defendant or release the defendant and dismiss the charges without prejudice, if the committed defendant has not been restored to competency and is not dangerous;

- c) release the committed defendant to an LRA if the committed defendant is not dangerous in whole or in part because of the habilitation or treatment that the patient is receiving, including taking medication, and the committed defendant has not been restored to competency; or
 - d) maintain the defendant's commitment for education, care, supervision and treatment to render the committed defendant competent or non-dangerous, if the committed defendant is dangerous.
132. Requires the court to annually report to the Arizona Criminal Justice Commission (ACJC) the previous year's number of:
- a) court orders for a trial to determine if a defendant charged with a serious offense is dangerous and should be involuntarily committed, including the number of jury trials held;
 - b) defendants committed after such a trial;
 - c) committed defendants who are conditionally released to an LRA; and
 - d) committed defendants who are restored to competency or determined to not be dangerous and who are discharged.
133. Requires the Medical Director to annually report to the ACJC the previous year's number of:
- a) committed defendants who are under the jurisdiction of the Medical Director because the individuals are dangerous, incompetent and non-restorable; and
 - b) dangerous committed defendants who are released.
134. Requires the prosecuting agency to represent the state in all hearings regarding dangerous and incompetent defendants.
135. Allows the prosecuting agency to request that a committed defendant be examined by a competent professional selected by the prosecuting agency.
136. Makes technical and conforming changes.
137. Becomes effective on January 1, 2024.

Amendments Adopted by the House of Representatives

- 1. Replaces the requirement that the court hold a trial by jury to determine if the defendant is dangerous and should be involuntarily committed with the requirement that the court hold a hearing to determine if there is proof evident or presumption great that the defendant committed the act that constitutes a serious offense.
- 2. Requires the court to appoint an attorney to represent the defendant in all proceedings if the defendant is not represented by an attorney and is indigent.
- 3. Outlines actions the court must take depending on whether the court does or does not find proof evident or presumption great that the defendant committed an act constituting a serious offense.
- 4. Requires a trial to determine dangerousness to be held before the court, unless the state or defendant requests a jury trial.

5. States that the Arizona Rules of Evidence and Arizona Rules of Civil Procedure apply to these proceedings, except that the court may consider evidence that is not admissible under the Arizona Rules of Evidence when making a determination of a defendant's dangerousness.
6. Allows both the defendant and the state, rather than only the defendant, to retain a mental health expert to examine the defendant.
7. Modifies the information required to be included in a competency evaluation examination.
8. Requires an appointed mental health expert to submit a written report of the examination to the court within 10 working days after the examination is completed.
9. Outlines information that the report to the court is required to include.
10. Requires a factfinder, rather than only a jury, to determine if a defendant is dangerous and should be involuntarily committed.
11. Adds that if a defendant is found to be dangerous and should be involuntarily committed, the court dismiss the charges against the defendant without prejudice before being committed to a secure state mental health facility.
12. Prohibits a commitment order from being in effect for more than the presumptive sentence the defendant could have received for the highest charged offense.
13. Prohibits the court from considering outlined sentence enhancements for prior convictions when determining the duration of the commitment order.
14. Require court to consider all time the defendant has been in custody, including pretrial detention, when determining the duration of the commitment order.
15. Allows the Medical Director of a secure state mental health facility, if a defendant is discharged or released on the expiration of a commitment order, to file a petition stating that the defendant requires further treatment or the appointment of a guardian.
16. Removes the stipulation that, for the purpose of calculating time that has passed since a committed person was charged to determine when the time to commence a charge expires, no time is tolled.
17. Removes the requirement that AHCCCS determine a defendant's eligibility for public and private benefits.
18. Adds that any statements made by the defendant during an examination by a mental health expert are only admissible in proceedings commenced under statute regarding dangerous and incompetent persons.
19. Requires a biannual examination report to be submitted to the state and removes the requirement that the report be submitted to the attorney of record for the committed defendant.
20. Allows either party, rather than just the prosecuting agency representing the state, to request that the committed defendant be examined by a competent professional.

21. Requires the prosecuting attorney to prove by clear and convincing evidence that the committed defendant remains dangerous due to mental illness and that the defendant is incompetent to stand trial, rather than prove by clear and convincing evidence that the committed defendant either remains dangerous due to mental illness or is competent to stand trial.
22. Shifts responsibilities related to committed defendants at secure state mental health facilities from the Superintendent of AHCCCS to the Medical Director of the secure state mental health facility.
23. Removes the requirement that AHCCCS notify the Department of Public Safety (DPS) of a committed defendant's release if the defendant is conditionally released to an LRA so that DPS can complete required notifications of specified individuals.
24. States that the Medical Director is responsible for expenses associated with the education, care, supervision and treatment to render the committed defendant either competent or nondangerous.
25. Requires a criminal justice agency, if requested by a licensed mental health hospital, to assist the hospital in determining the identity if an unidentified patient who is either incapacitated or deceased through an analysis of the patient's fingerprints or biometric identification techniques.
26. Allows the hospital or another person to fingerprint or obtain the biometric information from the unidentified patient and provide the fingerprints or biometric information to the criminal justice agency without the patient's consent or authorization.
27. Requires the criminal justice agency to provide the name of the unidentified patient to the hospital but is prohibited from providing any of the patient's criminal history record.
28. States that the requesting hospital is responsible for the cost of fingerprinting or obtaining the biometric information from the patient and is required to pay the fee for fingerprint and criminal history record processing.
29. Requires the court to adopt rules concerning the conduct of proceedings for commitment of dangerous and incompetent persons
30. Adds, removes and modifies definitions.
31. Modifies information required to be included in the court's annual report to ACJC.
32. Adds a delayed effective date of January 1, 2024.

Senate Action

JUD	2/17/22	DPA/SE	7-0-1
3 rd Read	3/14/22		17-21-1

House Action

JUD	3/23/22	DP	9-1-0-0
3 rd Read	6/22/22		58-0-2

Prepared by Senate Research

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ZD/sr